

Robert C. Sheps, Esq. (RCS-5388)
SHEPS LAW GROUP, P.C.
ATTORNEY FOR DEFENDANT
AMERICAN EAGLE OUTFITTERS, INC.
35 PINELAWN ROAD- 106 E
MELVILLE, NY 11747

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATLANTIC SPECIALTY INSURANCE et. al

X
**DEFENDANT'S
THIRD-PARTY
COMPLAINT**

: Plaintiff,

:
-v- : 07 Civ. 8508 (BSJ)(GWG)

AE OUTFITTERS RETAIL COMPANY et al.,

: Defendant.

X

FEDERAL INSURANCE COMPANY et al.,

: 08 Civ. 2157 (BSJ)(GWG)

: Plaintiff,

-v- :

AMERICAN EAGLE, :

: Defendant.

X

SOMPO JAPAN INSURANCE

: 08 Civ. 3294 (BSJ)(GWG)

: Plaintiff,

-v- :

AMERICAN EAGLE, :

: Defendant.

X

AE OUTFITTERS RETAIL COMPANY :

i/s/h/a AMERICAN EAGLE OUTFITTERS, INC.

Third-Party Plaintiff,

-v-

575 BROADWAY LLC,
575 BROADWAY ASSOCIATES L.P. and
575 BROADWAY CORPORATION,

Third-Party Defendants,

X

Defendant and Third-Party Plaintiff, AE OUTFITTERS RETAIL COMPANY

i/s/h/a AMERICAN EAGLE OUTFITTERS, INC. (hereinafter referred to as "American Eagle") by their attorneys, Sheps Law Group, P.C., hereby submits its Complaint against Third-Party Defendants, 575 Broadway LLC, 575 Broadway Associates L.P. and 575 Broadway Corporation, alleges as follows:

AS FOR A FIRST CAUSE OF ACTION

FIRST: That all times herein mentioned, Defendant and Third-Party Plaintiff, American Eagle was and still is a foreign business corporation duly authorized to conduct business in State of New York.

SECOND: That all times herein mentioned, Third-Party Defendant, 575 BROADWAY LLC, was and still is a domestic limited liability company duly organized and existing under and by virtue of the laws of the State of New York.

THIRD: That all times herein mentioned, Third-Party Defendant, 575 BROADWAY ASSOCIATES L.P. was and still is a foreign liability partnership duly authorized to conduct business in the State of New York.

FOURTH: That all times herein mentioned, Third-Party Defendant, 575 BROADWAY CORPORATION was and still is a foreign business corporation duly authorized to conduct business in the State of New York.

FIFTH: Third-Party Defendant, 575 BROADWAY LLC, 575 BROADWAY ASSOCIATES L.P. and 575 BROADWAY CORPORATION will be referred to from hereinafter as "575 Broadway".

SIX: Third-Party Defendant, 575 Broadway owned the premises and parts thereof known as 573-575 Broadway Avenue, New York, New York.

SEVENTH: Third-Party Defendant, 575 Broadway, its agents, servants and/or employees, operated the aforesaid premises and parts thereof known as 573-575 Broadway Avenue, New York, New York.

EIGHTH: Third-Party Defendant, 575 Broadway, its agents, servants and/or employees, supervised the aforesaid premises and parts thereof known as 573-575 Broadway Avenue, New York, New York.

NINTH: Third-Party Defendant, 575 Broadway, its agents, servants and/or employees, controlled the aforesaid premises and parts thereof known as 573-575 Broadway Avenue, New York, New York.

TENTH: Third-Party Defendant, 575 Broadway, its agents, servants and/or employees, inspected the aforesaid premises and parts thereof known as 573-575 Broadway Avenue, New York, New York.

ELEVENTH: Third-Party Defendant, 575 Broadway, its agents, servants and/or employees, leased the aforesaid premises and parts thereof known as 573-575 Broadway Avenue, New York, New York to Defendant and Third-Party Plaintiff.

TWELFTH: That all times hereinafter mentioned, the Plaintiffs commenced an action against Defendant and Third-Party Plaintiff, American Eagle to recover damages allegedly sustained at on January 21st, 2006 at the building located at 573-575 Broadway Avenue, New York, New York (hereinafter referred to as the "premises") due to a fire.

THIRTEENTH: That it is alleged in the plaintiffs' various complaints, a copy of which are annexed hereto and made a part hereof, that on January 21st, 2006, the Plaintiffs sustained damages by the aforementioned fire which allegedly occurred at the aforementioned premise.

FOURTEENTH: Annexed hereto and made a part hereof is the answer of the Defendant and Third-Party Plaintiff.

FIFTEENTH: That at or about the same time and place mentioned in the various Complaints of the Plaintiffs, the Third-Party Defendant, 575 Broadway, by act or omission violated the legal duty to exercise care to prevent damages to the Plaintiffs.

SIXTEENTH: That as a result of the negligence of the Third-Party Defendant, the Plaintiffs sustained damages thereby.

SEVENTEENTH: The negligence of the Third-Party Defendant, 575 Broadway, consisted of failing to take the necessary steps to prevent the fire and the infliction of damages to the Plaintiffs herein and/ or in causing and creating the alleged fire by their own conduct and/ or in failing to maintain the building systems.

EIGHTEENTH: That if Plaintiffs were caused to sustain damages as set forth in the Plaintiffs' respective Complaints through any acts of commission or omission then the same was caused by the aforementioned acts of omission or commission by the Third-Party Defendant, and if any judgment is recovered herein by the Plaintiffs against the Defendant / Third-Party Plaintiff, then the Third-Party Defendant, 575 Broadway, will be responsible therefore to indemnify the Third-Party Plaintiff.

NINETEENTH: That the reason of the foregoing, the Third-Party Defendant, 575 Broadway, will be liable to the Defendant / Third-Party Plaintiff, in the event and in the full amount of a recovery herein by the Plaintiffs and the Third-Party Defendant is bound to pay any and all attorneys fees and costs of litigation and disbursements.

AS AND FOR A SECOND CAUSE OF ACTION

TWENTIETH: The Defendant / Third-Party Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs number "FIRST" through "NINETEENTH" with the same force and effect as if herein set forth at length.

TWENTY-FIRST: That if the Plaintiffs were caused to sustain any damages as alleged in the Plaintiffs respective Complaints due to any negligence or carelessness other than the Plaintiffs' own negligence or carelessness, any such damages were occasioned by reason of the carelessness, recklessness and negligent acts of both of omission and/ or commission and by breach of duty both at common law and by statute by the Third-Party Defendant, 575 Broadway, and if there is any verdict or

judgment recovered by the Plaintiffs against the Defendant / Third-Party Plaintiff, it will be damaged thereby and the Third-Party Defendant will be liable to the Third-Party Plaintiff in whole or in part, and will be bound to indemnify the Third-Party Plaintiff in whole or in part in the event of such a recovery including contribution.

WHEREFORE, the Defendant / Third-Party Plaintiff, American Eagle, demands judgment dismissing the Plaintiffs' Complaints together with costs and disbursements of this action, and in the event that the judgment is rendered against the Defendant / Third-Party Plaintiff, that it will have judgment over and against the Third-Party Defendant in the same amount or in such proportionate amounts as the Third-Party Defendants' acts and/ or omissions contributed thereto, together with the costs and disbursements of this action.

Dated: Melville, New York
July 9th, 2008

SHEPS LAW GROUP, P.C.

By: _____

Robert C. Sheps, Esq. (RCS5388)
Attorneys for Defendant/ Third-Party
Plaintiff
AE OUTFITTERS RETAIL
COMPANY
35 Pinelawn Rd., Suite 106 East
Melville, New York 11747
(631) 249-5600
File No.: 6856

To:

Paul A. Tumbleson, Esq.
HOEY, KING, TOKER & EPSTEIN
Attorneys for Plaintiffs
55 Water Street, 29th Floor
New York, New York 10041-2899
(212) 612-4200

Paul R. Bartolacci
Cozen, OConnor
1900 Market Street
Philadelphia, PA 19103
(215) 665-2001

Mark T. Mullen
Cozen O'Connor (Philadelphia)
1900 Market Street
The Atrium
Philadelphia, PA 19103
215-665-2091